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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/174,868	10/19/1998	JOHN MUSACCHIA	14359-016	6251

7590

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EXAMINER

CEGIELNIK, URSZULA M

ART UNIT PAPER NUMBER

3712

DATE MAILED: 09/24/2002

24

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/174,868

Applicant(s)

MUSACCHIA, JOHN

Examiner

Urszula M Cegielnik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, and 3-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musacchia (US Patent No. 5,607,091).

Musacchia discloses a hunting device for producing sound comprising a game call and elevating device, wherein sound is produced, said game call having a scratch surface (slate 62) separated from a sound emanating surface (sound emanating surface 32), the sound emanating surface having apertures (holes 70) through which the sound in said game call escapes the game call; and a body attachment assembly (body attachment assembly 76), connected to said elevating device designed to releasably attach the game call and elevating device to the body of a user of the hunting device; the elevating device elevating the sound emanating surface of said game call such that the sound emanating surface is not in contact with a user when the body attachment assembly is attached to the body of a user, thereby providing an unencumbered path for the sound to escape the game call and reach ambient (col. 5, lines 34-37) as recited in claim 1; the elevating device comprises legs (legs 14, 16) each having a first end and a second end wherein said first ends of said legs are attached to said game call; and wherein said second ends of said legs are designed to contact the body of a user as

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required by claim 3; the elevating device comprises a platform (platform 12) having a top surface and a bottom surface, said platform supporting said game call; and legs depending from said platform (col. 4, lines 12-13), each said leg having a first end and a second end, wherein said first end of each said leg is in contact with said platform; and wherein said second end of each said leg is designed to contact the body of a user as recited in claim 4; said platform of the hunting device is substantially rectangular and includes front and rear legs (legs 14,16) extending from said bottom surface of said platform (col. 6, lines 15-29) as recited in claim 5; said body attachment assembly comprises an elongated flexible element (flexible element 78) having one end connected to said elevating device; and an opposite free end on said flexible element provided with a hook (hook 90) as claimed in claim 6; a receiving formation (slot 84) on said platform and wherein said hook is selectively engageable and disengageable with the receiving formation (col. 5, lines 64-65) as recited in claim 7; a game call with legs (legs 14,16), the game call having a scratch surface (slate 62) and a sound emanating surface (sound emanating surface 32), the sound emanating surface having apertures (holes 70) through which sound in the game call can escape the game call, each leg extending from the sound emanating surface and terminating in a leg end; and a body attachment assembly (body attachment assembly 76) designed to releasably secure each leg end to a hunter; the sound emanating surface designed to be separated a distance from a hunter by the legs when said body attachment assembly is secured to a hunter, each leg end designed for supporting the hunting device on a hunter, and for providing an unencumbered path for the sounds to escape the game call (col. 5, lines

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34-37) as claimed in claim 10; a game call and elevating device, wherein sound is produced, said game call having a scratch surface (slate 62) separated from a sound emanating surface (sound emanating surface 32), the sound emanating surface having apertures (holes 70) through which the sound in said game call escapes the game call; and a body attachment assembly (body attachment assembly 76) connected to said elevating device, designed to releasably attach the game call and elevating device to the body of a user of the hunting device; said body attachment assembly comprising an elongated flexible element (flexible element 78) having one end connected to said elevating device; and an opposite free end on said flexible element provided with a hook (hook 90); the elevating device elevating the sound emanating surface of said game call such that the sound emanating surface is not in contact with a user when the body attachment assembly is attached to the body of a user, thereby providing an unencumbered path for the sound to escape the game call and reach ambient (col. 5, lines 34-37) as claimed in claim 14; the elongated flexible element comprises a strap (strap 78); and a buckle (buckle 88) on said strap allowing for the adjustment of the length of said strap (col. as claimed in claim 15; a flexible tether (tether 72) having opposing ends; and a striker (striker 64); wherein said opposing ends of said tether are respectively attached to said striker and said platform of the device (Figure 1) as recited in claim 16; a game call with legs (legs 14,16), the game call having a scratch surface (slate 62) and a sound emanating surface (sound emanating surface 32), the sound emanating surface having apertures (holes 70) through which sound in the game call can escape the game call, each leg extending from the sound emanating surface and

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terminating in a leg end; and a body attachment assembly designed to releasably secure each leg end to a hunter comprising an elongated flexible element (flexible element 78) having one end connected to the game call; an opposite free end on the flexible element provided with a hook; and a receiving formation (slot 84) on the game call, wherein the hook is selectively engageable and disengageable relative the receiving formation (col. 5, lines 64-65); the sound emanating surface designed to be separated a distance from a hunter by the legs when said body attachment assembly is secured to a hunter, each leg end designed for supporting the hunting device on a hunter, and for providing an unencumbered path for the sounds to escape the game call (col. 5, lines 34-37) as recited in claim 17; the elongated flexible element comprises a strap (strap 78); and a buckle (buckle 88) on said strap allowing for the adjustment of the length of said strap (col. 5, lines 59-63) as required by claim 18.

Musacchia discloses the claimed invention except for the game call device constructed as one piece as recited in claims 1, 10, 14, and 17. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the game call device as one piece, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

### ***Response to Arguments***

Applicant's arguments filed 26 August 2002 have been fully considered but they are not persuasive.

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The Applicant contends that the examiner has failed to establish a *prima facie* case of obviousness. The examiner submits that the motivation to modify the references or to combine reference teachings resides in the knowledge generally available to one of ordinary skill in the art (see page 5, paragraph 2 of Office Action dated 20 May 2002).

In further support of the examiner's position, the examiner would like to point out that Jacob (US Patent No. 4,387,531) teaches a game call device constructed as one piece.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-


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306-5806. The examiner can normally be reached on Monday through Friday, from 6:45AM - 3:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at 703-306-5648.

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3712



**DERRIS H. BANKS**  
SUPERVISORY PATENT EXAMINER  
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